

## FIRST NOTICE OF COMMENT PERIOD

LSA Document #16-4

## INTERFERENCE OF A PUBLICLY OWNED TREATMENT WORKS

## PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to [327 IAC 5-17-11](#) concerning the definition of "interference" as it relates to pretreatment discharge to a publicly owned treatment works (POTW). IDEM seeks comment on the affected citation listed and any other provisions of Title 327 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [327 IAC 5-17-11](#).

**AUTHORITY:** [IC 13-14-8-5](#); [IC 13-14-9](#).

## SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

**Basic Purpose and Background**

[IC 13-14-8-5](#) allows any person meeting the statutory requirements to present a written proposal to the Environmental Rules Board (board) requesting adoption, amendment, or repeal of a rule. A written proposal for the amendment of [327 IAC 5-17-11](#), the definition of "interference" as it regards pretreatment discharge of wastewater into a POTW, was presented to the board at its meeting in January 2015. The proposal and its supporters alleged that the definition at [327 IAC 5-17-11](#) is more stringent than the federal definition at 40 CFR 403.3(k) and that the state's definition creates vagueness and subjectivity in determining whether interference has occurred at the POTW. The board held a hearing on the proposal and considered it at several board meetings after the initial presentation. The board's final action at its October 2015 meeting was to direct IDEM to conduct rulemaking to revise the definition at [327 IAC 5-17-11](#) to be consistent with the federal definition. IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 327 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

**Alternatives to Be Considered Within the Rulemaking**

Alternative 1. Amend [327 IAC 5-17-11](#) to be consistent with 40 CFR 403.3(k).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? The federal law requires that the state rule must be at least as stringent as the federal requirement.
- If it is a federal requirement, is it different from federal law? The purpose of this alternative is to change the state rule from being different than the federal requirement to being consistent with the federal requirement for the definition of "interference".
- If it is different, describe the differences. Existing state rule at [327 IAC 5-17-11](#) defines "interference" as occurring if one of three listed conditions occurs at the POTW due to a discharge or discharges from other sources. The listed conditions include a discharge or discharges that inhibit or disrupt the POTW, cause a violation of any of the POTW's NPDES permit requirements, and prevent the use of the POTW's sewage sludge or its sludge disposal method. The federal definition of "interference" ties the conditions and causing a violation of any requirement of the POTW's NPDES permit together so that all have to occur before interference has occurred.
- There is no other rulemaking alternative because the board directed IDEM to revise [327 IAC 5-17-11](#) to be consistent with 40 CFR 403.3(k).

**Applicable Federal Law**

The federal definition of "interference" occurs at 40 CFR 403.3(k), which is included in 40 CFR 403 for General Pretreatment Regulations for Existing and New Sources of Pollution.

**Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. The proposal before the board stated that the existing definition of "interference" is more stringent than the federal definition. Amending the state definition to be consistent with the federal definition would mean a lessening of potential fiscal impact. It is not possible to measure reduction of fiscal impact in the absence of an interference occurrence. A goal of the pretreatment program rules is to provide dischargers the regulatory guidance to avoid violations such as interference.

**Small Business Assistance Information**

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program

and other resources available can be found at:

[www.in.gov/idem/ctap](http://www.in.gov/idem/ctap)

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Patricia Daniel  
IDEM Small Business Regulatory Coordinator  
IGCN 1225  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 232-8172 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 4-4-35-8](#) is:

Erik Scheub  
Office of Small Business and Entrepreneurship  
One North Capitol, Suite 600  
Indianapolis, IN 46204  
(317) 232-5679  
[ombudsman@osbe.in.gov](mailto:ombudsman@osbe.in.gov)

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 4-4-35-8](#), specifically [IC 4-4-35-8\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Steven N. Howell  
IDEM Small Business Assistance Program Ombudsman  
IGCN 1301  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 232-8587 or (800) 451-6027  
[snhowell@idem.in.gov](mailto:snhowell@idem.in.gov)

#### **Public Participation and Work Group Information**

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel at (317) 232-8635 or (800) 451-6027 (in Indiana).

#### **REQUEST FOR PUBLIC COMMENTS**

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #16-4 Definition of Interference  
MaryAnn Stevens  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
Indiana Government Center North  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922.

- (3) By electronic mail to [mstevens@idem.in.gov](mailto:mstevens@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

**COMMENT PERIOD DEADLINE**

All comments must be postmarked, faxed, or time stamped not later than February 12, 2016. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel (317) 232-8635 or (800) 451-6027 (in Indiana).

Nancy King, Chief  
Rules Development Branch  
Office of Legal Counsel

*Posted: 01/13/2016 by Legislative Services Agency*

An [html](#) version of this document.